Supreme Court, U.S.
FILED
MAR 1 - 2004
OFFICE OF THE CLERK

No. 03-1084

IN THE

Supreme Court of the United States

ELOY A. ROLE,

Petitioner,

v.

ATCO PRODUCTS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, Atco Products, Inc. ("Atco"), has no parent corporation. There is no publicly held company that holds 10% or more of Atco's stock.

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REASONS FOR DENYING THE PETITION

Petitioner Eloy A. Role's Petition for Writ of Certiorari ("Petition") should be denied. The United States Court of Appeals for the Third Circuit ("Court of Appeals") correctly affirmed the decision of the United States District Court, District of New Jersey ("District Court"), which dismissed Petitioner's frivolous complaint against his former employer, Atco.

The Petition does not reveal a departure by the District Court or the Court of Appeals from the accepted and usual course of judicial proceedings, and fails to identify any important federal question that has been decided in a way that conflicts with relevant decisions of any court. Instead, the Petition simply rehashes arguments that have been considered and soundly rejected by every court that has thus far reviewed this matter.

By way of background, Petitioner was discharged from his employment as a tool and die maker with Atco for negligence in the performance of his duties. Pet., App A.6 at 4. In response, Petitioner filed numerous claims against Atco. *Id.* at 4-5. One claim, filed with the New Jersey Department of Labor, Division of Wage and Hour Compliance ("DOL"), alleged that Petitioner was owed vacation pay at the time of his discharge. *Id.* at 4. The DOL granted Petitioner's wage claim.

Atco appealed to Essex County Superior Court, a court of general jurisdiction ("Superior Court"). *Id.* The matter was heard in a *de novo* hearing. *Id.* at 5. The Superior Court concluded that Petitioner had been discharged for cause, and therefore dismissed the matter. *Id.*

Shortly thereafter, Petitioner initiated an action in the District Court. *Id.* In that action, Petitioner claimed that he was discharged on the basis of his age, in violation of the Age Discrimination in Employment Act ("ADEA"). *Id.* He also asserted numerous other claims based on a variety of Constitutional, statutory and common-law grounds. *Id.*

The District Court dismissed Petitioner's federal claims based, in part, on New Jersey's "entire controversy doctrine," whereby parties failing to join their claims face preclusion of the omitted claims. The District Court also dismissed certain of Petitioner's claims for failure to state a claim upon which relief could be granted. *Id.* at 6. The District Court declined to exercise jurisdiction over Petitioner's state law claims. *Id.* Thus, Petitioner's case ended. Petitioner appealed. The Court of Appeals affirmed the holding of the District Court. Pet., App. A1. This Petition followed.

Petitioner now contends (again) that the District Court erred when it permitted Atco to amend its answer to state the affirmative defense of issue preclusion, and when it barred claims under the entire controversy doctrine. Petitioner further contends that the Court of Appeals abused its discretion when it found Petitioner's conspiracy and privacy claims to be without merit, and when it disregarded Petitioner's contention that Atco's counsel made "false pleadings" regarding the Company's participation in the DOL proceeding. Pet. at 3-4.

As set forth in detail below, the Petition offers nothing new with respect to any of these arguments. In essence, the Petition alleges that the lower courts misapplied properly stated rules of law and/or made erroneous factual findings. Under the rules of this Honorable Court, such allegations

are rarely a sufficient basis upon which to grant a petition for a writ of certiorari. That is especially true where, as here, Petitioner has failed to establish any misapplication of the law or incorrect factual findings. Under these circumstances, the Petition should be denied.

ARGUMENT

I. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DECISION TO GRANT ATCO LEAVE TO AMEND ITS ANSWER.

Petitioner contends that the District Court erred when it held that Atco could amend its Answer to assert the affirmative defense of issue preclusion, and that the Court of Appeals erred when it affirmed that decision. Pet. at 6-7.

Federal Rule of Civil Procedure 15(a) governs amendments to pleadings. Leave to amend under this rule is liberally given. *See Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962); *accord Coventry v. United States Steel Corp.*, 856 F.2d 514, 519 (3d Cir. 1988). Denial of leave to amend must be based on a showing that the non-moving party would be "unfairly disadvantaged or deprived of the opportunity to present facts or evidence which it would have offered had the amendments been timely." *Bechtel v. Robinson*, 886 F.2d 644, 652 (3d Cir. 1989) (internal citation omitted). Delay in and of itself will not serve as a basis for denying leave unless the plaintiff is prejudiced, and *prejudice is ordinarily not presumed to exist unless the motion to amend is made during or after trial. Jean-Air Products, Inc.*, 283 F. Supp. 591, 594 (E.D. Pa. 1968).

In this case, the Court of Appeals specifically found that Petitioner was not prejudiced. Pet., App. A1 at 5. Instead, the Court of Appeals noted that Petitioner "addressed the new affirmative defense at length in his cross-motion for judgment on the pleadings, and the District Court considered his arguments before issuing its opinion and Order." *Id.*

The District Court and the Court of Appeals relied on the appropriate rule of law regarding amendment of a complaint. The Petitioner has failed to establish that they did not, or that he was prejudiced by the amendment. The Petition should therefore be denied.

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISMISSAL OF PETITIONER'S § 1985 CLAIMS.

Petitioner contends that the District Court erred by dismissing his claims of conspiracy under 42 U.S.C. §§ 1985(2) and (3), and that the Court of Appeals erred by affirming the dismissal. Pet. at 13-20. However, even after numerous attempts, Petitioner has *still* not alleged the elements necessary to state a cause of action under either section of the statute. Even if he had, his claims in this regard were barred by the entire controversy doctrine. *See* Pet., App. A2 at 10-11.

With respect to the claim that Respondent violated § 1985(2), the Court of Appeals correctly held that Petitioner failed to allege facts to establish a violation. Pet., App. A1 at 9. Specifically, the court noted that Petitioner "did not allege that [Respondent] conspired to deter him by force, intimidation, or threat from attending court or testifying freely in any pending matter." *Id.* In an attempt to cure this

fatal defect, Petitioner now alleges (for the first time) that Atco conspired with Petitioner's former employer because Petitioner "was attending federal proceedings in a civil lawsuit against his former employer and unions." Pet. at 16. The problem with Petitioner's argument is that he has *still* failed to articulate what the alleged conspiracy was. Further, whatever the conspiracy was, Petitioner has failed to establish how such conspiracy deterred him by force, intimidation, or threat from attending court or testifying freely in any pending matter. In sum, Petitioner's claim under § 1985(2) is incomprehensible, and the Petition should be denied as it relates to this claim.

To establish a claim under § 1985(3), Petitioner was required to establish a conspiracy based on class-based animus. Pet., App. A1 at 9. The Court of Appeals concluded that since Petitioner's ADEA claim lacked merit, the § 1985(3) claim could not be predicated on age. *Id.* To the extent that Petitioner now alleges that his § 1985(3) claim is based on his race, such allegations should be rejected, as they are made for the first time herein. *See* Pet., App. A1 at 9, A2 at 17-18. In the alternative, any such conspiracy claim that was grounded in Petitioner's employment relationship with Atco is precluded by the entire controversy doctrine because Petitioner failed to raise it before the Superior Court. Pet., App. A2 at 9-11. Finally, even assuming, *arguendo*, that Petitioner was not barred from pressing this new argument for the first time herein, Petitioner's claim still fails because he never explained how the facts alleged constitute a conspiracy. Pet. App., A1 at 9.

In light of these considerations, the lower courts were correct in dismissing Petitioner's § 1985(2) and (3) claims. The Petition, as it relates to these claims, should be denied.

III. THE COURT OF APPEALS CORRECTLY AFFIRMED DISMISSAL OF PETITIONER'S PRIVACY CLAIMS.

Petitioner claims that the District Court erred in dismissing his common law privacy claims, and that the Court of Appeals improperly affirmed the dismissal. Pet. at 19-20. Petitioner is wrong for two (2) reasons. First, Petitioner did not raise these claims before the District Court. Pet., App. A1 at 9. Instead, they were raised for the first time on appeal. Accordingly, they were properly dismissed by the Court of Appeals. *Id.* Second, even assuming Petitioner could raise these claims for the first time on appeal, these claims too would be barred by the entire controversy doctrine. Pet., App. A2 at 9-11.

Accordingly, the lower courts were correct in dismissing Petitioner's common law invasion of privacy claims, and the Petition in this regard should be denied.

IV. THE COURT OF APPEALS PROPERLY DISMISSED PETITIONER'S ADEA CLAIM ON THE MERITS.

The District Court dismissed Petitioner's ADEA claim on procedural grounds.[1] The Court of Appeals, however, went beyond mere procedural issues and instead undertook a comprehensive examination of the record related to Petitioner's ADEA claim. The Court of Appeals concluded Petitioner's ADEA claim was unsustainable as a matter of law, and therefore dismissed the claim. As discussed below, the Court of Appeals' decision was proper, and should not be disturbed.

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1. *See infra*, Point V, pp. 8 to 11.

The Court of Appeals correctly explained that to establish a *prima facie* case of age discrimination in violation of the ADEA, a party must establish that:

> (1) he was 40 years of age, (2) he was qualified for the position in question, (3) he suffered an adverse employment action, and (4) he was replaced by a sufficiently younger person so as to create an inference of age discrimination. If plaintiff establishes a *prima facie* case, an employer must rebut the presumption of age discrimination by stating a legitimate non-discriminatory reason for the adverse employment decision. The plaintiff then has the opportunity to demonstrate that the employer's proffered reason was a pretext for discrimination.

Pet., App. A1 at 6-7 (citing *Sempier v. Johnson & Higgins*, 45 F.3d 724, 728 (3d Cir. 1995)).

In this matter, the Court of Appeals found that Petitioner established a *prima facie* case of age discrimination because he alleged "that he was fifty nine years old at the time of the discharge, had experience as a tool and die maker, and was purportedly replaced by someone at least twenty years younger." Pet., App. A1 at 7.

The Court of Appeals noted, however, that "Atco claimed . . . that [Petitioner] was discharged for negligence," and had thus proffered a legitimate, non-discriminatory reason for Petitioner's discharge. *Id.* The Court of Appeals examined the record for evidence of inconsistencies that could support an inference that Atco did not act for the stated reason, *and found none*. *Id.* The Court of Appeals concluded that

Petitioner "did not, and cannot, demonstrate that Atco's proffered reason was a pretext for discrimination." Petitioner's ADEA claim was therefore dismissed on the merits. *Id.*

The Court of Appeals dismissal of Petitioner's ADEA claim was in accordance with properly stated law and based on undisputed facts. Accordingly, the petition should be denied.

V. THE DISTRICT COURT DID NOT ERR IN ITS APPLICATION OF THE ENTIRE CONTROVERSY DOCTRINE.

Petitioner incorrectly maintained that the District Court erred when it found his ADEA claim barred by the entire controversy doctrine. In support, Petitioner contends that he could not have asserted his ADEA claim before the District Court action, since the Superior Court lacked jurisdiction to hear it. Pet., App. A2 at 9-14. As discussed below, Petitioner is simply wrong. The Superior Court had jurisdiction to hear his ADEA claim, and the entire controversy doctrine required that he assert the claim — as well as any others that he had related to his employment with Atco — in the Superior Court action.

Even if the District Court erred in its application of the entire controversy doctrine, which Atco denies, the issue is now moot. Specifically, the Court of Appeals in its review of the District Court's decision went *beyond* the entire controversy doctrine, and concluded that there was *no merit to the underlying cause of action*. Thus, even if Petitioner's ADEA claim should not have been dismissed by the District Court — which Atco also denies — the claim has since been considered and rejected by the Court of Appeals.

A. *The Entire Controversy Doctrine*

Under New Jersey law, parties failing to join their claims face preclusion of the omitted claims pursuant to New Jersey Court Rule 4:30A, entitled the Entire Controversy Doctrine. That rule provides:

> Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine.

Cases decided under New Jersey law have consistently held that the entire controversy doctrine requires the mandatory joinder of *all claims to a single transaction*. *See Falcone v. Middlesex County Medical Society*, 47 N.J. 92, 219 A.2d 505 (1966) (emphasis added); *W.M. Blanchard Co., v. Beach Concrete Co., Inc.*, 150 N.J. Super. 277, 375 A.2d 675 (App. Div. 1977). This doctrine "encompasses virtually all causes, claims, and defenses relating to a controversy," including counterclaims and cross-claims. *Cogdell v. Hospital Ctr at Orange*, 116 N.J. 7, 15-18, 560 A.2d 1169 (1989); *accord Prevratil v. Mohr*, 145 N.J. 180, 187, 678 A.2d 243 (1996) (stating that "[a]t a minimum, all parties to a suit should assert all affirmative claims and defenses arising out of the underlying controversy"); *Circle Chevrolet Co. v. Giordano, Halleran & Ciesla*, 142 N.J. 280, 289, 662 A.2d 509 (1995); *Boardwalk Regency Corp., v. Square Brighton Corp, Inc.*, 288 N.J. Super. 494, 500, 672 A.2d 1185 (App. Div. 1996). It is the for the court to decide whether claims must be joined under the entire controversy doctrine. *See Boardwalk Regency Corp., supra*, 288 N.J. Super. at 503, 672 A.2d 1185. (explaining that "discretion to determine whether joinder is required is reserved solely to the trial

court"). Indeed, "[a] plaintiff who fails to allow the trial court the opportunity to supervise the entire controversy risks losing the right to bring that claim later." *Id.* (citations omitted). Federal courts are required, under 28 U.S.C. §1738, "to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgment emerged." *Kremer v. Chemical Construction Corporation*, 456 U.S. 461, 466, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982).

B. *Jurisdiction of the Superior Court.*

The Superior Court of the State of New Jersey is a court of "original general jurisdiction *in all causes*." N.J. Const. 1947, Art. 6, § 3, ¶2 (emphasis added). Thus, the Superior Court had jurisdiction to hear any and all claims that Petitioner may have had related to his employment. Further, the Superior Court's review of a DOL action is *de novo*. *See Marr v. ABM Carpet Service, Inc.*, 286 N.J. Super. 500, 504, 669 A.2d 864 (Law Div. 1995). Petitioner thus had the opportunity "to produce any witness not produced or sworn in the court below, or any documentary evidence not offered or admitted in the court below. . . ." *See N.J.S.A.* 34:11-65.

C. *Review of the District Court's Decision.*

In light of the above, it is clear that Petitioner had a sufficient opportunity, as well as an obligation, to raise all claims related to his employment (including his ADEA claim) in Superior Court. He simply failed to do so.

The Court of Appeals agreed that the Superior Court had jurisdiction over Petitioner's ADEA claim. Pet., App.

A1 at 6. It did not decide the entire controversy issue, however, as the Court of Appeals found Petitioner's ADEA claim to be without merit. *Id.* at n. 2. Specifically, the Court of Appeals found that Petitioner failed to proffer any evidence of pretext to rebut Atco's legitimate business reason for his discharge (*i.e.* negligence in the performance of his work). Pet., App. A1 at 7. Although the Court of Appeals never reached the entire controversy question, it plainly went *beyond* what was required to affirm the District Court's decision by addressing the underlying merits of the ADEA claim. Pet., App. A1 at 6. Had the Court of Appeals reached the issue, it surely would have concluded, in accordance with settled precedent, that the District Court correctly applied the entire controversy doctrine.

Since Petitioner's ADEA claim was found to be without merit, Petitioner's joinder argument is moot, and the Petition should be denied.

VI. PETITIONER'S CLAIM THAT ATCO'S COUNSEL MADE "FALSE PLEADINGS" IS UNTRUE.

Petitioner contends that counsel for Atco made "false pleadings" when the undersigned represented to the Court of Appeals that Petitioner's judgment at the DOL was a default judgment. Pet. at 4-6. This argument is specious. The DOL itself stated in its January 7, 2002 Decision that it was an "Award by Default." Pet., App. A4. Further, the DOL also represented in the Decision that Atco "was not present to defend itself against the claim," and "was not present and thus could not dispute what the plaintiff testified to." *Id.* In light of these very clear and undeniable references to a default judgment, Petitioner's argument must be rejected.

CONCLUSION

For all of the foregoing reasons, Atco respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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